

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.3.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.28535 of 2003

1. State of Tamil Nadu represented by
Secretary to Government,
Rural Development Department,
Fort St.George, Chennai-9.
 2. The Director of Rural Development,
Chennai-15.
 3. The District Collector,
Namakkal District. .. Petitioners
- vs.
1. G.Madheshwaran
 2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai-104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, as stated therein.

For petitioners : Mr.V.Raghupathy, Govt. Pleader
For respondents : Mr.M.Ravi for R-1
R-2 Tribunal

ORDER

R.SUDHAKAR, J.

The writ petition has been filed praying for issuance of a writ of certiorari, to call for the records pertaining to the order dated 14.6.2002 made in O.A.No.1873 of 2000 on the file of the Tamil Nadu Administrative Tribunal, Chennai, the second respondent herein and quash the same.

2. The writ petition has been filed by (i) the State of Tamil Nadu, represented by Secretary to Government, Rural Development Department, Fort St.George, Chennai-9, (ii) the Director of Rural Development, Chennai-15 and (iii) the District Collector, Namakkal District, aggrieved by the order of the Tribunal, wherein, the petitioners were directed by the Tribunal to consider the case of the first respondent for compassionate appointment.

3. It is the case of the first respondent, the applicant before the Tribunal that his father while he was working as Teacher in the Panchayat Union Elementary School, Senthamangalam, Namakkal District, died in harness on 30.9.1974. The first respondent hails from a Scheduled Caste community and living in a downtrodden condition and all his elder brother and sisters were young in age and they did not get educated due to indigent circumstances. Therefore, they were making a living by working as Coolies. The first respondent who is the last of the brothers, was able to undergo some education by the help of his family members. The first respondent completed Higher Secondary Course and Diploma in Electronics and Communication Engineering. The first respondent was born on 6.6.1974 and he was just three months old when his father died on 30.9.1974. The older brother and sisters were also very young. The mother, an illiterate, did not apply for compassionate appointment. This was only due to her ignorance and social status. The first respondent's contention is that he has completed Higher Secondary Course in the year 1998 and thereafter, he was aware of the provision of compassionate appointment and therefore, he made a representation to the authorities seeking appointment to the post of Junior Assistant on the ground of compassionate appointment.

4. The Tahsildar, Namakkal Taluk, on the basis of a detailed enquiry, by his proceedings dated 24.9.1998 has reported that no person from the first respondent's family was working in Government organisation and that they have no movable or immovable property. He also reported that the first respondent's family was living in a thatched house and the only source of income is the family pension of Rs.1,376/-. In this view of the matter, the case of the first respondent is that they are living in poverty and in the background of their social status, they had no occasion to seek for any legal remedy or seek compassionate appointment. It is also the case of the first respondent that the elder brother and sisters were also illiterates and they have given their "no objection" for the first respondent being appointed on compassionate grounds. The case of the first respondent is also supported by certificate issued by the Headmaster of the Panchayat Union Elementary School, Senthamangalam, Namakkal District. The claim of the first respondent for appointment under the compassionate grounds was considered by the relevant authorities, namely the third petitioner, the District Collector, Namakkal, by proceedings dated 8.12.1999, referring to the letter of the Government and the Director of Rural Welfare Department (the first and second petitioners herein), rejected the representation for appointment on compassionate grounds. The reason given by the Collector is extracted hereunder:

"Thiru.R.Ganesan died on 30.9.1974 while working as Primary School Teacher in Namakkal District, Senthamangalam Panchayat Union. None of his legal heirs had sought for appointment on compassionate grounds immediately. Only the last legal heir, namely G.Madheswaran has applied after 24 years. Madheswaran has passed S.S.L.C.

in the year 1990 and he has not sought for any such appointment. However, the same has been made in the year 1998. Therefore, it can be inferred that the family is not in indigent circumstances and the claim is rejected."

5. The main contention of the petitioners is that the claim for compassionate appointment is belated, (i.e.) 24 years, as the employee concerned, the teacher, had died in the year 1974. The reason for compassionate appointment, according to the Government, is to ameliorate the grievance of the family whose breadwinner had died in harness and in view of the indigent circumstances prevailing at the time of death, the compassionate appointment will be made. However, in this case, the claim for compassionate appointment is made after more than two decades and therefore, it was rejected. The petitioners have also relied on the Government Letter No.39924/Q1/95-1, Labour and Employment Department, dated 11.10.1995 to state that the time limit of three years is applicable for such appointment.

6. The Tribunal, while considering the claim of the first respondent, in paragraphs 6 and 7 held as follows:

"6. It is an admitted fact that after the scheme of compassionate appointment is introduced various Government orders were issued by the Government. The conditions of compassionate appointment are that the family of the deceased Government Servants should be in indigent circumstances, and none of the members of the family should be in either Government or Private Organisation employment. The person applying for the post should be the legal heir of the deceased Government Servant. Here in this case, the applicant satisfied all the conditions. The only reason for non-consideration of his request is that he has made the application after 24 years of the death of the Government Servant. Just because the applicant made the application after 24 years, it does not mean, that the applicant's family is not in indigent circumstances. The list of people below poverty line has been produced by the applicant's counsel. The said list was prepared by the additional Block Development Officer, Namakkal, on 11.6.1999. The name of the applicant's mother with whom the applicant also resides as a family is listed in the list of families coming below the poverty line. This shows that the applicant's family is in indigent circumstances. Just because the family survives for 24 years, that does not mean the family is not in indigent circumstances. In a village, even a person who is doing Agriculture cooly

work survives. Mere survival cannot be a reason for coming to a conclusion that the family is not in indigent circumstances. The G.O., issued in the year 1995 and thereafter, and letter issued by the Government fixing some time limit for making application for compassionate appointment will be applicable to cases of Government servants who died in harness only after 1995. That is not applicable to the case of the applicant as his father died prior to 1974.

7. Considering all the above facts, it is very clear that the applicant's family is in indigent circumstances and in below poverty line category and none of the members of the applicant's family is either in Government service or in any other service. The applicant is a legal heir of the deceased Government Servant. Therefore, it is very clear that the applicant satisfied all the conditions for compassionate appointment. Therefore, the impugned order is set aside. The respondents are directed to consider the case of the applicant for appointment on compassionate grounds a suitable post according to his qualification. The O.A. is allowed. "

7. It is not disputed that at the time of considering the claim of the first respondent in the year 1998, the G.O. prescribing the time limit has already come into force. Therefore, the petitioners have rejected the claim as belated. However, the Tribunal, relying on the relevant G.Os. applicable prior to 1995 with regard to the appointment on compassionate grounds, held that the claim of the first respondent's family that they are in indigent circumstances, is acceptable. The reasons have already been set out above.

8. As regards the belated claim of the first respondent, the Tribunal, relied on the recommendation of the various authorities that the first respondent's family comes under "below poverty line" and the family will consequentially fall under the category of indigent circumstances and therefore, the Tribunal would condone the delay of 24 years in making the claim for compassionate appointment. The Tribunal was of the view that the G.O. of the year 1995 will operate prospectively and not retrospectively. No doubt, the Tribunal's conclusion in the facts and circumstances, is laudable and we express the same sentiments as that of the Tribunal. We are unable to agree with the findings of the Tribunal in view of the settled position of law with regard to compassionate appointment.

9. The claim of the first respondent will have to be considered in the light of the relevant Government Orders and the rules and regulations pertaining to compassionate appointment.

10. The question relating to compassionate appointment has been considered by the Supreme Court in several cases. In 1994 (4) SCC 138 (UMESH KUMAR NAGPAL v. STATE OF HARYANA AND OTHERS), it was observed:

" ... Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family."

11. In 1998 (5) SCC 192 (DIRECTOR OF EDUCATION (SECONDARY) AND ANOTHER v. PUSHPENDRA KUMAR AND OTHERS), it was observed :

" ... In Umesh Kumar Nagpal v. State of Haryana this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family."

12. In 1998 (2) SCC 412 (STATE OF U.P. AND OTHERS v. PARAS NATH) it was observed:

"..... 5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgment of this Court in the case of Union of India v. Bhagwan Singh. In this case, the application for appointment on similar compassionate grounds was

made twenty years after the railway servant's death. This Court observed:

"The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family."

7. No such considerations would normally operate seventeen years after the death of the government servant. The High Court was, therefore, not right in granting any relief to the respondents."

13. In the present case, the application for appointment under compassionate grounds has been filed after 24 years. The widow of the employee who died in harness has not opted for such appointment. The reason given by the Collector is also in line with the various decisions of the Apex Court referred to above.

14. The object behind compassionate appointment has been in no uncertain terms explained by the various judgments of the Supreme Court referred to above, namely the purpose of such appointment is to provide financial assistance to the family of the deceased Government servant at the time of his death in indigent circumstances. As observed by the Apex Court, such consideration will not arise if the claim is made after a long period of time. In this case, it is after 24 years. The object behind the compassionate appointment would be lost if the legal heirs of the deceased employee are allowed to seek compassionate appointment at any length of time. Only in such view of the matter, the Government in the year 1995, clarified that the application for compassionate appointment should be made within a period of three years from the date of the employee dying in harness. Therefore, the benevolent provision of the compassionate appointment cannot be said to be made applicable without any time limit.

15. We therefore find no justification in the order of the Tribunal directing the authorities concerned to provide employment to the first respondent on compassionate grounds after more than 24 years from the date on which the employee-Teacher died in harness.

Hence, the impugned order of the Tribunal is set aside. The writ petition is allowed. No costs.

cs

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. State of Tamil Nadu represented by
Secretary to Government,
Rural Development Department,
Fort St.George, Chennai-9.
 2. The Director of Rural Development,
Chennai-15.
 3. The District Collector, Namakkal District.
- + one cc to Mr.M.Ravi, Advocate Sr.No.14382.
+ one cc to The Government Pleader, High Court, Madras, Sr.No.14566.

PPV (CO)
RSM/12.4.2006

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